

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Scholastic Bus Service, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation Franchise
Tax under Article 9A of the Tax Law for the Years
1974 - 1977. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon Scholastic Bus Service, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Scholastic Bus Service, Inc.
c/o S. Zinder
98 Cutter Mill Rd.
Great Neck, NY 11021

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of July, 1984.

David Parchuck

James P. Hynes
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Scholastic Bus Service, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law :
for the Years 1974 - 1977. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 26th day of July, 1984, he served the within notice of Decision by certified mail upon Philip I. Mintz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip I. Mintz
Gerald H. Dalkk, P.C.
111 Great Neck Road
Great Neck, NY 11021

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
26th day of July, 1984.

David Parchuck

James P. Haddad
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

July 26, 1984

Scholastic Bus Service, Inc.
c/o S. Zinder
98 Cutter Mill Rd.
Great Neck, NY 11021

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 Months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Philip I. Mintz
Gerald H. Dalkk, P.C.
111 Great Neck Road
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SCHOLASTIC BUS SERVICE, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1974	:	
through 1977.	:	

Petitioner, Scholastic Bus Service, Inc., c/o Samuel Zinder, 98 Cutter Mill Road, Great Neck, New York 11021, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1974 through 1977 (File No. 37231).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1983 at 9:15 A.M. Petitioner appeared by Samuel Zinder, Esq. and Phillip Mintz, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner is entitled to a refund for the years 1974 and 1975 based upon a net operating loss carried back from 1976 and 1977 where there was no Federal net operating loss carryback for either of the years in issue.

FINDINGS OF FACT

1. On September 15, 1978, the Audit Division issued two notices of deficiency against petitioner, Scholastic Bus Service, Inc., for the years 1974 and 1975. The deficiencies were based on issues unrelated to the current matter. On April 4, 1980, as a partial response to the deficiencies, petitioner

filed two protective refund claims. For 1974, petitioner claimed a refund of \$13,740.00 based on a net operating loss carryback from 1976. For 1975, petitioner claimed a refund of \$12,079.00 based on a net operating loss carryback from 1976 and 1977. The Audit Division, by letter dated December 30, 1981, denied petitioner's refund claim in full stating, "A net operating loss allowed in any year may not be greater than the net operating loss allowed for federal purposes. Since there is no federal loss available for carryback...", petitioner was not entitled to a refund based on a net operating loss carryback.

2. Petitioner was a sister corporation to Pioneer Transportation Corporation ("Pioneer"). Petitioner leased school buses to Pioneer whose primary business was the transportation of school children under contract with the New York City Board of Education. Petitioner and Pioneer filed Federal corporation tax returns on a consolidated basis for the years 1974 through 1977. For New York State corporation franchise tax purposes, petitioner and Pioneer filed on an individual basis in 1974 and 1975 and on a combined basis for 1976 and 1977.

3. In 1976, Pioneer had Federal taxable income of \$213,626.00 and petitioner had a loss of \$159,933.00 for a total net income of \$53,693.00 for Federal purposes. In computing its New York taxable income, Pioneer was entitled to a deduction from its Federal income of \$202,945.00 for amounts received from school districts for the operation of school buses. The deduction resulted in Pioneer having New York taxable income of \$10,681.00. When combined with petitioner's \$159,933.00 loss, the result was an overall loss of \$149,255.00 for New York tax purposes. In 1977, Pioneer had Federal taxable income of \$228,962.00 and petitioner had a loss of \$131,702.00 for a total Federal taxable income of \$97,260.00. Pioneer was entitled to a school bus deduction of \$217,513.00 resulting in New York taxable income of \$11,449.00 which when

combined with petitioner's \$131,702.00 loss yielded a net loss of \$120,253.00 for New York tax purposes.

4. Petitioner, in its claim for refund, wished to carryback the 1976 and 1977 net operating losses to 1974 and 1975. The Audit Division's position is that, in both 1976 and 1977, petitioner's and Pioneer's combined Federal income resulted in net income not a net loss, therefore, no net operating loss carryback is allowed for New York purposes even though there was an overall New York loss. Petitioner's position is that, in determining whether there will be a net operating loss allowable, the school bus adjustment must first be subtracted from Federal taxable income to arrive at a figure petitioner characterized as "Adjusted Consolidated Federal Taxable Income". If the result is a net operating loss, then petitioner should be allowed to carry the loss back even though there was no allowable Federal net operating loss carryback.

CONCLUSIONS OF LAW

A. That section 208.9(f) of the Tax Law provides, in pertinent part, that a net operating loss deduction is allowed in computing entire net income for New York corporation franchise tax purposes. The New York deduction is subject to certain limitations, one of which is that the New York net operating loss deduction may not exceed the deduction allowable for Federal tax purposes.

B. That 20 NYCRR 3-8.7(a) provides:

"In the case of a corporation which reports for purposes of article 9-A on a combined basis with one or more related corporations, either in the taxable year in which a net operating loss is sustained or in the taxable year in which a deduction is claimed on account of such loss, the deduction is subject to the same limitations which apply for purposes of the federal income tax as if such corporation had filed for such taxable year a consolidated federal income tax return with the same related corporations. If a corporation files a combined report for purposes of article 9-A, regardless of whether it filed a separate return or consolidated return for federal income tax purposes, the net

operating loss and any carry back or carry forward for purposes of article 9-A will be computed as if the corporation had filed a consolidated return for the same corporations for federal income tax purposes."

For taxable years beginning prior to January 1, 1976, 20 NYCRR 3.12(f) provided:

"In the case of a corporation which reports for New York State franchise tax purposes on a combined basis with one or more related corporations, either in the year in which a net operating loss is sustained or in the year in which a deduction is claimed on account of such loss, the allowance of such deduction is subject to the same limitations which would apply for purposes of the Federal income tax if such corporation had filed for such year a consolidated Federal income tax return with the same related corporations. These limitations apply to allowance of the New York net operating loss deduction regardless of whether in fact such corporation, for Federal income tax purposes, filed an individual or a consolidated return."


C. That, in both 1976 and 1977, petitioner had no net operating loss deduction allowable for Federal tax purposes. The New York net operating loss was due to the school bus deduction which is a New York adjustment only. There is no such characterization of income as "Adjusted Consolidated Federal Taxable Income". The latter term is merely petitioner's misnomer for New York entire net income. Federal consolidated income cannot be changed by New York adjustments to yield a loss which would not be allowable for Federal purposes. If there is no allowable Federal net operating loss carryback, there may be no New York net operating loss carryback. Section 208.9(f) is clear on this issue and nowhere does the law state that New York adjustments are to be applied to Federal taxable income prior to determining if there is a Federal net operating loss for a particular year. Since there was no Federal net operating loss carryback allowable for 1976 and 1977, petitioner is not allowed a New York net operating loss carryback for those years.

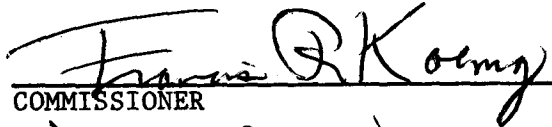
D. That the petition of Scholastic Bus Service, Inc. is denied and the denial of refund issued December 30, 1981 is sustained.

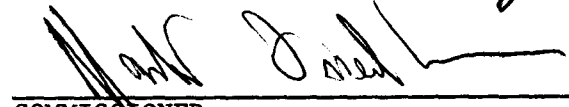
DATED: Albany, New York

STATE TAX COMMISSION

JUL 26 1984


PRESIDENT


COMMISSIONER


COMMISSIONER